

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Dov Levavi	Team: Team # 4	CCRB Case #: 201113211	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 10/05/2011 7:30 PM	Location of Incident: Broadway and Wall Street	Precinct: 01	18 Mo. SOL 4/5/2013	EO SOL 4/5/2013	
Date/Time CV Reported Sat, 10/08/2011 12:20 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 10/08/2011 12:20 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Walter Connolly	00000	905994	PBSI TF
2. POM Thomas Manning	10032	930644	PBMS TF

Officer(s)	Allegation	Investigator Recommendation
A.LT Walter Connolly	Force: Lt. Walter Connolly struck § 87(2)(b) and individuals with a baton.	
B.LT Walter Connolly	Force: Lt. Walter Connolly poked § 87(2)(b) with a baton.	
C.POM Thomas Manning	Force: PO Thomas Manning used pepper spray against § 87(2)(b) and individuals.	

### Case Summary

On October 8, 2011, Sgt. Marilyn Medina of the 1<sup>st</sup> Precinct filed a complaint on behalf of § 87(2)(b) via the CCRB call processing system. At approximately 7:30 p.m. on October 5, 2011, an Occupy Wall Street demonstration took place at Broadway and Wall Street in Manhattan. § 87(2)(b) participated as a protester, while § 87(2)(b) and § 87(2)(b) were present § 87(2)(b). After the protesters gathered at the intersection, where there was a police presence, an altercation between officers and protesters broke out and resulted in multiple arrests. The following allegations resulted:

- **Allegation A – Force: Lt. Walter Connolly struck § 87(2)(b) and individuals with a baton.**
- **Allegation B – Force: Lt. Walter Connolly poked § 87(2)(b) with a baton.**

§ 87(2)(g)

- **Allegation C – Force: PO Thomas Manning used pepper spray against § 87(2)(b) and individuals.**

§ 87(2)(g)

§ 87(2)(g)

### Results of Investigation

#### Video Transcriptions

The following is a transcription of the Youtube video entitled, “§ 87(2)(b)”, (encl. IA #81):

- At 0:23, the video shows the intersection of Broadway and Wall Street in Manhattan. A group of Occupy Wall Street protestors can be seen on the right side of the frame and a group of officers can be seen on the left. Beginning at 0:25, a struggle appears to take place as the groups move together. Beginning at 0:30, a uniformed officer in a white shirt, identified by the investigation as Lt. Walter Connolly, is visible on the left side of the frame. He can be seen swinging what appears to be a baton at members of the crowd around him. At 0:41, he pauses and appears to adjust the baton in his hands. The video then cuts to a group of officers who can be seen picking up a metal barrier from the ground. At 0:52, Lt. Connolly can be seen in the foreground and appears to move toward the camera with a baton in his hands. The camera appears to move toward the ground and a male voice can be heard saying, “§ 87(2)(b) you okay?”

The following is a transcription of another Youtube video which depicts the same incident from a different angle. The video is entitled, “§ 87(2)(b)” and was uploaded by “§ 87(2)(b)”. The video was recorded by § 87(2)(b) (encl. IA #78):

- Beginning at 0:07, a white-shirted officer in the center of the frame (identified by the investigation as Lt. Connolly) can be seen swinging what appears to be a baton at the crowd

around him. At 0:17, as Lt. Connolly continues to swing his baton, a substance that appears to be pepper spray can be seen coming from left of the frame. At 0:26, Lt. Connolly faces the camera and can be seen swinging his baton toward individuals who cannot be seen. At 0:30, another white shirt officer enters the frame and can be heard saying, "Get back." At 0:40, a uniformed officer stands close to the camera and repeatedly says, "Back." At 0:45, Lt. Connolly re-enters the frame, standing close to the camera, and says "Back up" as he appears to lunge toward the camera. This elicits an audible reaction from the cameraman (identified by the investigation as § 87(2)(b)) as the video shakes and moves toward the ground. At 0:52, the cameraman groans and can be heard saying, "Fucking motherfucker. I'm a fucking journalist, you motherfucker." As he says this, the movement of the camera indicates that he has resumed standing. No additional baton use or physical altercations can be seen and the crowd proceeds to chant as the situation calms down.

Two additional Youtube videos of this incident were obtained by the investigation (encl. IA#79-80). They provided different angles of the incident § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

### **Civilian Statements**

#### **Complainant/Victim:** § 87(2)(b)

- *A white male who is 5'8" tall, weighing 150 pounds with red hair and blue eyes,* § 87(2)(b) *was* § 87(2)(b) *old at the time of the incident.* § 87(2)(b)
- § 87(2)(b)

#### **CCRB Statement**

§ 87(2)(b) was interviewed at the CCRB on December 13, 2011 (encl. b4-9). He provided a telephone statement on November 9, 2011 (encl. b3a) that was consistent with his in-person testimony. At approximately 7:30 p.m. on October 5, 2011 § 87(2)(b) participated in an Occupy Wall Street demonstration that reached Broadway and Wall Street in Manhattan. § 87(2)(b) was not with any acquaintances and he did not know any of the other protesters. A group of one hundred to two hundred protesters had marched from Zuccotti Park toward Wall Street by walking south on Broadway. People walked mostly on the sidewalks during this march. Protesters were generally peaceful at this time and were not aggressive

At the intersection of Broadway and Wall Street, the width of Wall Street was blocked by metal gate barriers. Protesters amassed into the street as people approached the barriers. Directly behind these barriers, 20-30 uniformed officers were lined up. Most officers were in blue shirts and there were several officers in white shirts. § 87(2)(b) was close to the barricades toward the south side of Wall Street, with only one or two rows of people standing between him and the blockade. § 87(2)(b) did not see any officers on his side of the barriers.

When protesters saw that they were unable to enter onto Wall Street, the crowd became more anxious. People asked the officers on the other side of the barriers what they were doing and why they had blocked off the street. Protesters made announcements to decide what they would do next. § 87(2)(b) did not hear any officers give orders to the crowd.

After about five minutes, a group of ten to twenty protesters in front of § 87(2)(b) began to push the metal barriers forward. No protesters passed into the other side of the barriers. § 87(2)(b) did

not push the barriers himself. Officers behind the barricade pushed back against the crowd. § 87(2)(b) did not hear any officers give orders to the crowd at this point. § 87(2)(b) heard a whacking sound. His left eye had recently undergone surgery, so he could not see well out of it. Several feet away on his left side, § 87(2)(b) saw another officer, identified by the investigation as Lt. Walter Connolly, swinging a baton in the protesters' side of the barrier. § 87(2)(b) saw Lt. Connolly's baton make contact with a male protester's backpack. § 87(2)(b) turned away from Lt. Connolly, who was now about one or two feet to § 87(2)(b)'s left, in order to avoid being hit by the baton.

§ 87(2)(b) then felt one hard hit from a hard object on the left side of his torso under his left arm. This caused § 87(2)(b) to fall down onto his knees. Immediately after he was hit, § 87(2)(b) felt a burning sensation on the back of his neck as he heard protesters saying that pepper spray had been discharged by the police. The pepper spray came from directly behind § 87(2)(b) where the police officers stood. § 87(2)(b) at no point saw an officer holding a canister of pepper spray. He did not see any other protesters being sprayed, but he did see people whom he did not recall specifically reacting to the spray.

§ 87(2)(b) immediately attempted to get away from the scene by moving on his knees away from the barriers. At the same time, more officers approached the back of the crowd from different directions on Broadway and began to arrest protesters. § 87(2)(b) continued to move on his knees through the line of police officers at the back of the crowd and left the area. He did not receive medical treatment.

The strike to § 87(2)(b)'s side caused pain and a bruise that lasted two weeks. He did not have any visible bruises at the time of his interview. Two days after the incident, § 87(2)(b) went to the 1<sup>st</sup> Precinct stationhouse and filed a complaint. There, a Hispanic female officer took § 87(2)(b)'s complaint.

At the time of the incident, § 87(2)(b) did not see Lt. Connolly swing the object that hit him. He concluded that Lt. Connolly had done so after seeing video footage of the incident. At the conclusion of his interview, § 87(2)(b) watched a Youtube video of the incident entitled, "§ 87(2)(b) uploaded by § 87(2)(b). At 0:22, § 87(2)(b) identified the intersection of Broadway and Wall Street in the video. At 0:27, § 87(2)(b)'s head can be seen on the rightmost part of the screen as the crowd begins to push forward into the barriers. At 0:30, § 87(2)(b) identified the officer in the frame as the officer with the baton from his narrative. Beginning at 0:37, § 87(2)(b) identified the swing of the baton that he felt on his left side.

**Victim:** § 87(2)(b)

- *A white male who is 5'11" tall, weighing 150 pounds with blonde hair and blue eyes, § 87(2)(b) was § 87(2)(b) old at the time of the incident.* § 87(2)(b)

**CCRB Statement**

§ 87(2)(b) was interviewed at the CCRB on April 16, 2012 (encl. b10-14). § 87(2)(b) described the atmosphere of the rally as powerful, cheerful, and optimistic. § 87(2)(b) was among the crowd when between several hundred and one thousand protestors began to walk from Zuccotti Park toward Wall Street. There was a large police presence, but more officers arrived when the rally started to travel down Broadway towards Wall Street. § 87(2)(b) took video

footage of officers driving scooters and nearly hitting the protestors. He was among the first group of people who reached Broadway and Wall Street.

Police entered from various directions and formed a barricade at the intersection of Wall Street and Broadway, preventing people from entering and approaching the New York Stock Exchange. The barricade consisted of metal barricades and police officers standing behind and in front of the barricades. There were approximately 50-70 officers in the vicinity. § 87(2)(b) went to the front of the crowd, attempting to get pictures of the incident. He stood near the central/northern side of the Wall Street entrance and about 7-10 feet from the barrier.

The atmosphere there was relatively calm for about 5 minutes. The only order § 87(2)(b) heard from the officers was to not block pedestrian and vehicle traffic in the middle of Broadway. The demonstrators were standing around when § 87(2)(b) heard screaming and whistle blowing. § 87(2)(b) did not know what led up to this or what caused the situation to escalate. He did not see any direct confrontation between demonstrators and officers leading up to this moment. § 87(2)(b) heard later that demonstrators had pushed the barriers, but he did not witness this at the time. § 87(2)(b) saw an officer, identified by the investigation as Lt. Connolly, approach protestors from the north side of Broadway and violently swing his baton at individuals. § 87(2)(b) also saw an officer, identified by the investigation as PO Thomas Manning, discharge pepper spray “indiscriminately” at § 87(2)(b) whose eyes were affected, and at people in front and to the left of § 87(2)(b). § 87(2)(b) did not see any protestors punching or pushing police officers. Officers picked up and threw demonstrators and shoved others to the ground.

As § 87(2)(b) held a camera and continued filming, an unidentified uniformed officer instructed him to move back. § 87(2)(b) attempted to move back but was hindered by the crowd of people behind him and the blurred vision sustained from the pepper spray. A white shirt officer (whom § 87(2)(b) stated may or may not have been the same officer as Lt. Connolly, but whom the investigation determined was Lt. Connolly) approached § 87(2)(b) looked down at his press credentials and turned his baton sideways, with the end pointed towards § 87(2)(b). Lt. Connolly then hit § 87(2)(b) in his stomach/solar plexus region with the baton. § 87(2)(b) had the wind knocked out of him. § 87(2)(b) heard the officer scream something, but was unsure what. Lt. Connolly, who was about 5 feet away from § 87(2)(b) then continued to strike approximately 10 other unidentified individuals with the baton in the same “stabbing” motion. § 87(2)(b) believed these blows hit the lower mid-section area of the individuals.

§ 87(2)(b) grabbed his gut and was approached by another officer. § 87(2)(b) could not describe this officer and this officer was not captured in his video footage). The unidentified officer pushed § 87(2)(b) to the ground. § 87(2)(b) were to the left of § 87(2)(b) and he saw the cameraman fall to the ground after being hit in the side by a baton swung by Lt. Connolly. § 87(2)(b) later found out, from speaking with him, that § 87(2)(b) spent a night in the hospital with back problems. § 87(2)(b) continued to see other people being thrown around by the officers.

§ 87(2)(b) stood up and yelled, “I’m a fucking § 87(2)(b) you motherfuckers.” An unidentified white shirt officer replied, “this is a football field.” § 87(2)(b) was unsure which officer said this and could not describe him. § 87(2)(b) continued to film another protestor who was thrown by an officer at § 87(2)(b). § 87(2)(b) attempted to move

away but was caught between the crowd of demonstrators and a group of officers. § 87(2)(b) told officers not to hit him anymore and was able to move to a safer, less congested area.

§ 87(2)(b) sustained sore, red, teary eyes with impaired vision caused by the pepper spray. The impaired vision subsided through the night. He sustained loss of breath and temporary breathing problems (which subsided during the day) from receiving a blow the stomach. § 87(2)(b) also sustained minor back pain and slight bruising from being thrown to the ground. § 87(2)(b) did not receive any medical treatment.

§ 87(2)(b) watched the Youtube video containing the footage that he recorded (encl. IA#78) and noted the following: At 0:17, an officer wearing glasses and a blue shirt enters the left of the screen with pepper spray. A camera visible on the left of the screen belonged to the Fox news cameraman to whom § 87(2)(b) referred. At 0:35, an individual is thrown by a blue shirt officer (whom § 87(2)(b) believed to be same officer with the pepper spray). At 0:41, an officer in a blue uniform tells § 87(2)(b) to move back. At 0:45 Lt. Connolly enters the left side of the screen and hits § 87(2)(b) with baton. At 0:59, the news cameraman can be seen standing back up. At 1:24, an individual is thrown through the crowd in § 87(2)(b)'s direction.

**Victim:** § 87(2)(b)

- *A white male who is 5'11" tall, weighing 167 pounds with brown hair and blue eyes, § 87(2)(b) was § 87(2)(b) old at the time of the incident. § 87(2)(b)*

**Medical Records**

- § 87(2)(b)'s medical records from § 87(2)(b) note as his chief complaint, "Mace in eye from police attack. Fell over, trampled by crowd, lower back pain. Dizziness, shaking, weakness." The records note, § 87(2)(b) old male presents with bilateral lower back pain and eye exposure to mace pepper spray at approximately 8:00 tonight. Patient was covering protests today § 87(2)(b). When police began using pepper spray to control the crowd, patient accidentally sprayed and pushed backwards, landing on buttocks." (encl. d1-26)

**CCRB Statement**

§ 87(2)(b) was interviewed at the CCRB on March 16, 2012 (encl. b15-19). He provided a telephone statement on February 27, 2012 (encl. b14a) that was consistent with his in-person testimony. § 87(2)(b)

§ 87(2)(b). The demonstration began at Zuccotti Park and § 87(2)(b) followed the protesters as they walked down Broadway to the intersection of Broadway and Wall Street.

At the intersection, the entrance to Wall Street was blocked off by metal barriers. About thirty to forty demonstrators gathered in front of the barriers, behind which stood about twelve uniformed police officers. There were additional officers who stood on Broadway behind § 87(2)(b) and the group of demonstrators as they faced Wall Street and the metal barriers. About four officers at the scene wore white shirts. § 87(2)(b) stood about twenty to thirty feet away from the metal barriers as he held a 25-pound camera and recorded the incident. Both § 87(2)(b) and § 87(2)(b) had their press ID badges displayed. They stood behind the crowd of protesters and in front of the line of officers who were on Broadway.

The protesters remained calm during the march to Wall Street and when they arrived there. They chanted but were generally peaceful, and at one point they sat down in front of the barriers. After about twenty minutes, several protesters directly across the barriers from the police officers pushed the barriers forward. This caused a great amount of chaos as an altercation broke out and officers pushed the crowd back. Some protesters told others to get away from the barriers, but several of them seemed to have wanted to cause trouble. § 87(2)(b) did not see any protesters jump over the barriers or swing at officers. The officers behind § 87(2)(b) stayed where they were. Within thirty seconds, § 87(2)(b) saw an officer, identified as Lt. Connolly, come around the barrier from the Wall Street side. Lt. Connolly seemed very agitated. § 87(2)(b) did not hear him give any orders at this point, although he had been speaking to the protesters about ten minutes before the chaos broke out. Lt. Connolly swung his baton at protesters, making contact with at least six individuals as he walked forward. § 87(2)(b) later learned that § 87(2)(b) was hit by Lt. Connolly's baton under his right ribs, although he did not witness this.) He hit some of them in the back and some on the side. § 87(2)(b) did not see any specific injuries being sustained or any blood. It seemed at the time that protesters were trying to get away from Lt. Connolly and none seemed to be acting aggressively toward Lt. Connolly. § 87(2)(b) did not see any other altercation between other protesters and officers.

§ 87(2)(b) continued to record the incident as he moved about five to ten feet closer to the barriers. Several officers in white shirts stood in front of § 87(2)(b) as they attempted to push him back. One of these officers was an older white male who was about 5'11" tall with a husky build. § 87(2)(b) lifted his camera over his head in order to film the incident over the white shirt officers who were in front of him, and he stopped moving closer. After less than a minute, while he stood about fifteen feet away from Lt. Connolly, § 87(2)(b) saw out of his left eye an officer, identified by the investigation as PO Manning, come from around the barriers, hold up a can of pepper spray and spray toward him. § 87(2)(b) believed that PO Manning intended to pepper spray him directly. There was nobody else whom PO Manning could have been aiming at and no one directly around § 87(2)(b) was acting aggressively. § 87(2)(b) did not hear PO Manning give any orders. The pepper spray made contact with § 87(2)(b)'s eyes, causing pain and preventing him from opening his eyes fully. § 87(2)(b) believed that PO Manning sprayed him because he was recording Lt. Connolly. § 87(2)(b) was not affected by the pepper spray and he did not witness § 87(2)(b) being pepper sprayed. Neither § 87(2)(b) nor § 87(2)(b) were ever instructed by officers to leave the location.

Officers continued to push the crowd back away from the barriers, and the movement of the crowd caused § 87(2)(b) to fall backwards onto the sidewalk while holding his camera. § 87(2)(b) fell to the ground also, and they were both stepped on by protesters. § 87(2)(b) picked up the camera and led § 87(2)(b) away from the scene. They walked up Broadway toward Zuccotti Park and § 87(2)(b) drove § 87(2)(b) to § 87(2)(b). § 87(2)(b) was treated for temporary blindness, eye pain and lower back pain. The back pain was a result of § 87(2)(b) falling down while holding his camera. § 87(2)(b) was prescribed Motrin and the back pain did not persist. § 87(2)(b) did not receive any more physical treatment since this hospital visit, but he has been seeing a psychiatrist, who diagnosed him with Post Traumatic Stress Disorder. At the time of his interview, § 87(2)(b) did not plan to file a Notice of Claim regarding the incident.

### **Attempts to Contact Civilians**

- Attempts were made to contact § 87(2)(b). Although § 87(2)(b) initially stated that he wished to cooperate with the investigation, he did not respond to subsequent contact attempts. Therefore, no testimony was obtained from him.

### **NYPD Statements:**

#### **Subject Officer: LT. WALTER CONNOLLY**

- *A white male who is 5'8" tall, weighing 210 pounds with brown hair and hazel eyes, Lt. Connolly was § 87(2)(b) old at the time of the incident.*
- *Lt. Connolly worked from 5:30 a.m. to 12:35 a.m. the following morning assigned to a COBRA detail with PO Santoro and PO McDonald. He was in uniform and was assigned to vehicle #4154.*

### **Memo Book**

- 3:45 p.m., Post change to Wall Street demonstration at Liberty Street and Church Street. (encl. c7-8)

### **CCRB Statement**

Lt. Walter Connolly was interviewed at the CCRB on June 21, 2012 (encl. c9-11). Lt. Connolly was assigned to the Occupy Wall Street demonstrations with PO Santoro, PO McDonald, and members of a COBRA team whom he did not recall. He started out near Zuccotti Park, where hundreds of people gathered as part of the demonstration. The crowd began to move south on Broadway toward Wall Street, and gathered in front of the entrance to Wall Street. As they walked south, protesters in the crowd blocked traffic on Broadway, made anti-police statements and were generally rowdy, although Lt. Connolly saw no acts of violence at this point. Throughout the demonstration, orders were given to protesters to stay on the sidewalk and not to block traffic. Lt. Connolly was instructed by Chief John Sassano (then the executive officer of Patrol Borough Manhattan South, now retired) to deploy his team along the outside of a line of metal barriers that separated Wall Street from Broadway. Lt. Connolly knew, and it was known throughout the NYPD at this time, that these barriers were set up there and that protesters were not allowed to enter onto Wall Street. Lt. Connolly believed that it was a bad idea for him and his team to be pinned between the barriers and the protesters. While Lt. Connolly and his team lined up along the Broadway side of the barriers, officers from Patrol Borough Manhattan South Task Force stood behind them on the Wall Street side. Hundreds of protesters were gathered in front of Lt. Connolly's team and onto Broadway. Lt. Connolly had not discussed or been given any instructions regarding what to do if the crowd attempted to enter Wall Street.

Within a minute after Lt. Connolly set up along the barriers, a large number of protesters, including those in the row directly facing Lt. Connolly, linked their arms together and counted down from ten. Lt. Connolly heard no statements from the protesters as to what their plan was, but he understood that they planned to move forward toward the barriers. Lt. Connolly did not recall if orders were given to the crowd at this point to stay back. At the end of the countdown, the protesters walked forward in the direction of the barriers while linking arms. Lt. Connolly and his team had their backs against the barriers as the crowd moved forward, pinning them in that space. One barrier to Lt. Connolly's left was knocked down. Lt. Connolly took out his baton and, with the intention of protecting himself and other officers, swung it in accordance with departmental guidelines to create space between the crowd and the barriers and to keep the crowd from crushing him and other officers against the barriers. Lt. Connolly swung his baton at individuals in the crowd, aiming at "center mass" and avoiding contact with people's heads.



There were approximately twenty to thirty protesters in Lt. Connolly's direct vicinity at the time. Lt. Connolly's baton made contact with several individuals, beneath the level of their shoulders. He did not recall how many times he swung the baton, but recalled swinging it continuously until he was out of danger, which took about a minute. While doing this, Lt. Connolly gave orders for people to stay back.

Lt. Connolly aimed his baton specifically at protesters who were closest to him as they walked forward and some made physical contact with him. None threw punches at Lt. Connolly. He could not see what his partners were doing at the time, although he saw several protesters jumping over the barriers and being detained by officers on the other side. Lt. Connolly's swinging caused those protesters closest to him to back away. To his left, Lt. Connolly saw more protesters attempting to jump over the barriers, so he moved closer and swung at them as well. Lt. Connolly did not swing at or attempt to hit individuals after they backed off. He did not recall swinging his baton at individuals who had their backs turned to him. Lt. Connolly did not see any other officers swing batons. Lt. Connolly recalled jabbing the front tip of the baton at several individuals' stomachs to get them back. He did this to protesters who were close by and who had to be moved back for his safety and that of his fellow officers. Lt. Connolly did not recall any specific individuals toward whom he used this method, which is within departmental guidelines.

Pepper spray had been discharged while Lt. Connolly swung his baton. The pepper spray came from behind Lt. Connolly and was directed toward the crowd, and he was affected by it. He did not know who discharged the pepper spray and he did not know if any civilians were affected by the spray.

Lt. Connolly saw numerous news teams in the area around the time of the incident. He did not recall § 87(2)(b) and § 87(2)(b) being present in his direct vicinity when he swung his baton. Lt. Connolly stated that he is familiar with § 87(2)(b) and learned after the incident that he had been there. However, Lt. Connolly did not recall seeing § 87(2)(b) at the scene during the incident. He did not intentionally swing his baton at § 87(2)(b) or recall making incidental contact with § 87(2)(b). Lt. Connolly did not recognize § 87(2)(b) or § 87(2)(b) when shown their photographs.

Lt. Connolly's efforts succeeded in keeping the crowd from entering Wall Street. After several minutes, the situation was contained and the crowd had been moved onto Broadway. A number of arrests were made, although none were made by Lt. Connolly. After the incident, Lt. Connolly was commended and was told that officers would have been hurt if action was not taken.

Lt. Connolly watched the Youtube video entitled, "§ 87(2)(b)" Lt. Connolly recognized himself at 0:24 behind a white-shirt officer in the foreground whom he did not recognize and at the left of the frame, swinging his baton at 0:30. At this time, he noted that protesters to his left, out of frame, were trying to cross over the barriers. No protesters in the video can be seen making physical contact with Lt. Connolly at this point, although he stated that they were making contact with other officers at the time. He also stated that prior to what is seen in the video at this point, protesters were pressing into him. By looking at the video, Lt. Connolly could not verify that the people at whom he swings the baton are the same people who had walked into him. However, he stated definitively that they had pressed other officers into barriers or compromised barriers, pushing them into officers on the other side. Lt. Connolly recognized himself moving forward again at 0:52. At this point, Lt. Connolly stated here that any protesters who were in the area at the time had already breached an initial set of

barriers that separated Broadway from an approximately 50-foot space from where the barriers he guarded were set up. Those initial barriers were on each side (north and south) of Wall Street, where the street met Broadway. However, by the time the crowd was advancing toward Lt. Connolly's barriers, they had already gone around those barriers and into the prohibited 50-foot space.

**Subject Officer: PO THOMAS MANNING**

- *A white male who is 6'0" tall, weighing 230 pounds with brown hair and blue eyes, PO Manning was § 87(2)(b) old at the time of the incident.*
- *PO Manning worked from 7:00 a.m. on October 5, 2011 to 12:50 a.m. on October 6, 2011 assigned to the Occupy Wall Street Demonstrations with Patrol Borough Manhattan South Task Force. His partners were PO Michael Russo, PO Keith Brock and PO Paul Linder. He was in uniform and was assigned to a marked van.*

**Memo Book**

- 7: 00 p.m., Post changed to Wall Street; 7:30 p.m., At TPO, Occupy Wall Street Demonstrators smashed through barrier at Wall Street and Broadway. At that time, I used the minimal amount of force, which was pepper spray, in fear of the safety of other officers and civilians. (encl. c1-2)

**CCRB Statement**

PO Thomas Manning was interviewed at the CCRB on June 12, 2012 (encl. c3-6). According to PO Manning, over a thousand people had been demonstrating throughout the day as part of the Occupy Wall Street movement. During the protests, metal NYPD barriers were set up to block off Wall Street from other streets because NYPD officials feared that the protesters would attempt to march to and possibly vandalize the Stock Exchange. At approximately 7:30 p.m., PO Manning was made aware of a call on the radio by Chief Thomas Purtell instructing Patrol Borough Manhattan South Task Force officers to respond to Wall Street and Broadway. A group of protesters was gathering at that intersection, and officers were instructed to keep the crowd from crossing over into the Wall Street side of the barriers. PO Manning responded there with his partners and lined up with approximately twenty other officers, on the Wall Street side of the barriers. Sgt. Andrew Turano and Sgt. Brian Burns also arrived at the scene, and Chief Purtell was there as well, standing on PO Manning's side of the barriers. PO Manning stated that the group of officers was short of supervisors until the point at which fighting broke out. PO Manning was not given any specific instructions about what actions to take if the crowd became unruly or tried to cross the barriers, although the officers there were given specific instructions not to allow the crowd to breach the barriers. Approximately two or three hundred protesters had gathered at the intersection.

When PO Manning first arrived at the scene, the crowd was relatively calm, although there were several instigators, some of whom used profanities toward the officers and one of whom told others that they should get arrested. Others in the crowd wanted to sit down and have a more peaceful demonstration, and there was some argument between members of the crowd over how they would proceed. PO Manning saw Lt. Stephen Latalardo standing on the same side of the barrier as him.

About five minutes after arriving at the intersection, there was talk among the protesters of breaking through the barriers and making a run for the Stock Exchange building. About five to six protesters encouraged the crowd to do this, and although most of the group seemed to disagree with this plan at first, they were eventually swayed. PO Manning made eye contact with one male

protester on the other side of the barrier from him. He shook his head and told the protester that it would not be good if the group began to push the barriers, and the protester agreed. About thirty protesters linked arms and counted down from ten before moving forward in an attempt to break through the barriers. One of the barriers tipped over.

PO Manning attempted to push back the barrier in front of him, fearing that the whole line of barriers would tip since they were all connected. Within seconds of when the pushing started, PO Manning saw several feet in front of him two white male lieutenants in uniform, who were not from PO Manning's command and whose names he did not know, swinging their batons toward protesters who had been attempting to cross the barriers. He had not seen these lieutenants until this point, but believed they had been standing on the Broadway side of the barriers, trying to interact with Chief Purtell and then join a group of officers forming behind the crowd when the melee broke out. PO Manning saw the lieutenant closest to him hit one protester—a white male between 20 and 35 years old with a shaved head and wearing a bandana on his neck—twice in the mid-rib area. This protester was one of the individuals who had linked arms and rushed the barriers. PO Manning has seen him several times during different demonstrations, and he often wears a fluorescent hat. PO Manning did not see the lieutenants hitting anyone whose back was toward him. He did not see either of the lieutenants hitting any news reporters.

The lieutenants with the batons managed to drive the crowd back enough to create space for PO Manning to cross over the barriers at the spot where one had tipped over. PO Manning saw Sgt. Turano tussling with a protester several feet away as some officers attempted to grab and arrest individuals who had pushed through the barriers. Some protesters struggled with officers while others retreated. There were news cameras at the scene, some of which were tripped over by people in the crowd. PO Manning saw members of the press set up about 15 feet behind the protesters. He saw, as protesters were pushed back and officers from behind the crowd rushing forward, members of the press getting tripped up and falling down. The bright lights of the news cameras were somewhat of a distraction to PO Manning and obscured his vision. Based on the crowd's behavior and his fear that the protesters would take over the street, PO Manning discharged his pepper spray for about three seconds toward the group of protesters in front of him, believing that it was the safest and most reasonable amount of force needed to push the crowd away from the officers and the barriers.

At the time that PO Manning discharged the spray, PO Manning feared for his safety and that of other officers. He aimed the pepper spray at the chest areas of about three to four individuals, who seemed like they still wanted to advance forward and fight. One male protestor tussled with Sgt. Turano as he and Sgt. Turano held onto each other. PO Manning could not get to Sgt. Turano because a protester or a barrier was in his way. PO Manning believed that two other protesters wanted to grab one of the lieutenants based on the way they moved forward. PO Manning believed that the pepper spray affected Sgt. Turano as well as the individual with whom he tussled. PO Manning had dealt with crowd control before, but prior to this incident never discharged his pepper spray in a crowd control situation. PO Manning did not know if his pepper spray affected anyone holding a camera, although he did not intentionally discharge the spray at anyone holding a camera or a light. Thousands of flashes went off when PO Manning discharged the pepper spray. He stated that one camera, possibly the one that was shining in his face, was only several feet behind the individual who had tussled with Sgt. Turano.

PO Manning looked at a photograph from the cover from the Daily News on October 6, 2011 (encl. xvi). He acknowledged that he is the officer seen discharging pepper spray in the middle of

the photograph. He identified Sgt. Turano as the individual standing left of him in the photograph, holding his eyes. He identified the individual seen in the foreground of the photograph, wearing a gray sweater and red plaid shirt, as the protester who tussled with Sgt. Turano. § 87(2)(b)

He was unable to identify the officer whose face is seen at the rightmost part of the photograph. PO Manning's use of the pepper spray, combined with the arrival of additional officers from behind the group of protesters, caused the crowd to disperse. Following the use of pepper spray, PO Manning did not see the two lieutenants continue to swing their batons. He did not see any lieutenant use the front of his baton to poke anyone's front side.

PO Manning saw a photograph of § 87(2)(b) and stated that he looked familiar, but did not recall seeing him at the scene. He looked at a photograph of § 87(2)(b) but did not recall seeing him. He did not recall seeing anyone holding a camera fall down. In the minutes after he discharged the pepper spray, PO Manning assisted in the handcuffing of several individuals whom he did not recall and was not assigned any arrests. When he saw Chief Purtell again, several minutes after the melee, Chief Purtell was soaked in pepper spray, although not from PO Manning's canister.

PO Manning watched the Youtube video entitled, "§ 87(2)(b)" He did not recognize § 87(2)(b) visible at the beginning of the interview. PO Manning identified his own head in the leftmost part of the screen at 0:24. He believed that the two white shirt officers in front of him were the two lieutenants who swung their batons, although he was not sure. At 0:29 seconds, a white shirt officer can be seen swinging his baton, at which point PO Manning stated he was to the left of the screen from where this was occurring. He was unable to recognize the officer. At 0:43 seconds, a member of the crowd can be heard yelling about pepper spray. He referenced the right of the screen at 0:45 as an area where about 15 scuffles between officers and protesters were occurring.

PO Manning watched the Youtube video entitled § 87(2)(b) At about 0:10, a white shirt officer is seen swinging his baton. At about 0:16 seconds, pepper spray can be seen being discharged from the left of the screen. PO Manning recognized the officer in a white shirt at 0:31 as a captain, although he did not know his name. He did not see this captain swing a baton. PO Manning identified himself in the video at 0:33, when he seems to throw something toward the crowd. He did not know what he was doing at the time. At 0:38 seconds, PO Manning can be seen pulling back a uniformed officer as other officers pick up the barriers that had been knocked over. PO Manning did not recognize the lieutenant visible at 0:45, who appears to lunge toward the camera and swing a baton. He recognized the officer standing directly left on screen from that lieutenant as Sgt. Turano. He recognized an officer whose badge is visible at 1:02 as a chief, based on his uniform, although he did not know who he was. He recognized the officers whose backs are to the screen at 2:04 as task force officers from another borough, although he could not identify them.

#### **Summons/Arrest for Incident and Disposition**

- None of the complainants and witnesses involved in this complaint were arrested or issued summonses as a result of the incident.

### **Status of Civil Proceedings**

- § 87(2)(b) and § 87(2)(b) have not filed Notices of Claim with the City of New York as of October 23, 2012 with regard to the incident. (encl. f1)

### **Civilians Criminal History**

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]
- [REDACTED]  
[REDACTED]
  - [REDACTED]  
[REDACTED]  
[REDACTED]
  - [REDACTED]  
[REDACTED]  
[REDACTED]

### **Civilians CCRB History**

- § 87(2)(b)  
[REDACTED]  
[REDACTED]

### **Subject Officers CCRB History**

- Lt. Connolly has been a member of the service for 18 years and there are no substantiated CCRB allegations against him. (encl. a2)
- PO Manning has been a member of the service for 10 years and there are no substantiated CCRB allegations against him. (encl. a1)

### **Conclusion**

### **Identification of Subject Officers**

- Lt. Connolly admitted that he swung and poked individuals with his baton and identified himself as the officer seen doing so in a Youtube video. PO Manning admitted that he discharged pepper spray and identified himself as the officer seen doing so in video and in a photograph of the incident.

### **Investigative Findings and Recommendations**

**Allegation A – Force: Lt. Walter Connolly struck § 87(2)(b) and individuals with a baton.**

**Allegation B – Force: Lt. Walter Connolly poked § 87(2)(b) with a baton.**

§ 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]

§ 87(2)(b) stated that the crowd became anxious when protesters learned that they were unable to enter onto Wall Street, and that people asked officers why they had blocked off the street while others made announcements regarding what they would do next. PO Manning testified that he heard talk among the protesters of breaking through the barriers and making a run for the Stock Exchange building. According to § 87(2)(b) a group of ten to twenty protesters in front of him pushed the metal barriers forward. It is undisputed that Lt. Connolly then struck and poked members of the crowd with his baton. § 87(2)(g)  
[REDACTED]

§ 87(2)(g)

While § 87(2)(b) did not recall seeing any protesters push the barriers, § 87(2)(b) and § 87(2)(b) stated—in corroboration with the officers’ testimony—that although the situation began relatively calmly, protesters at the front of the crowd advanced toward the barriers before they were pushed back by officers and force was used.

Officers are permitted to use only the minimum amount of force necessary, and “are responsible and accountable for the proper use of force under appropriate circumstances.” NYPD Patrol Guide Procedure 203-11 (encl. i-ii). Additionally, the Police Student’s Guide suggests that “whenever possible, officers should use the baton rather than their fists or feet,” and notes that the baton may serve various purposes, including its use as “an instrument of force to steer a disorderly crowd into a designated area.” (encl. iii-iv).

§ 87(2)(g)

§ 87(2)(b)’s testimony and the video footage in which he identified himself indicate that he was struck by Lt. Connolly’s baton soon after the device was first employed by Lt. Connolly. § 87(2)(g)

Approximately 30 seconds later, according to the video footage and § 87(2)(b)’s testimony, Lt. Connolly turned his baton and thrust one end at § 87(2)(b)’s mid-section. By this point, the footage shows that some members of the crowd were in retreat and the officers were successfully creating space in front of the barriers. According to Lt. Connolly, there was an area of approximately 50 feet on the Broadway side of the barriers that he guarded—marked by additional barriers—where the crowd was not permitted to be, and which the protesters had already penetrated by the time the physical confrontation broke out. § 87(2)(g)

§ 87(2)(b) An officer can be seen and heard telling § 87(2)(b) to move back prior to Lt. Connolly’s poke. § 87(2)(b) stated that he was unable to move back because of the crowd behind him. § 87(2)(g)

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

**Allegation C – Force: PO Thomas Manning used pepper spray against § 87(2)(b) and individuals.**

It is undisputed that PO Manning discharged pepper spray toward the individuals in the crowd of protesters. § 87(2)(g)

[REDACTED]

Police officers may discharge pepper spray when they reasonably believe that it is necessary to protect themselves or others from unlawful use of force, effect an arrest of a subject resisting arrest or establish physical control of a subject attempting to flee. NYPD Patrol Guide Procedure 212-95 (encl. v-viii).

PO Manning stated that after the barriers were pushed, some protesters struggled with officers while others retreated. Based on the behavior of certain members of the crowd and PO Manning's fear that the protesters would take over the street, PO Manning discharged his pepper spray for about three seconds toward the group of protesters in front of him, believing that it was the safest and most reasonable amount of force needed to push protestors away from the officers and the barriers. He stated that he feared for his safety and that of other officers, and that Sgt. Turano struggled physically with a protester.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g) [Redacted text block]

§ 87(2)(g) [Redacted text block]

Team: \_\_\_\_\_

Investigator:	_____	_____	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date